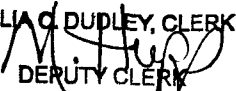


MAY 14 2013

JULIA C. DUDLEY, CLERK  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

ANTHONY CHARLES BROWN,	)	
	)	Criminal No. 4:99cr70105
Petitioner,	)	
	)	
v.	)	<u>2255- FINAL ORDER ADOPTING</u>
	)	<u>REPORT AND RECOMMENDATION</u>
	)	
UNITED STATES OF AMERICA,	)	
	)	By: Hon. Jackson L. Kiser
Respondent.	)	Senior United States District Judge
	)	

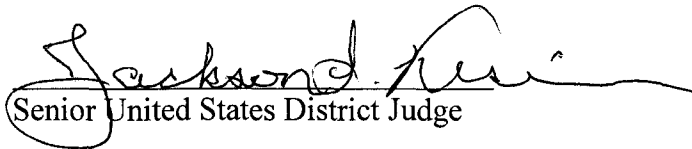
Anthony Charles Brown brings this action under 28 U.S.C. § 2255, alleging that counsel provided ineffective assistance by failing to communicate a plea offer from the United States, which caused him to testify at the suppression hearing to suppress the drug evidence, and by failing to advise him of the extent to which his false testimony at the suppression hearing could negatively affect his sentencing guideline range. Respondent moved to dismiss the case and the court referred the matter to the United States Magistrate Judge Robert S. Ballou for an evidentiary hearing to determine whether the United States communicated a plea offer either to petitioner or to petitioner's counsel. The Magistrate Judge conducted an evidentiary hearing and subsequently filed a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), finding that no plea offer existed and that counsel did not render ineffective assistance by failing to specifically explain how false testimony would affect the sentencing guideline calculation, as she did advise petitioner of his duty as a witness to testify truthfully and told him that lying under oath could increase the length of his sentence. The Magistrate Judge recommended that respondent's motion to dismiss be granted and that Brown's § 2255 motion be dismissed. Brown filed timely objections to the report and recommendation, largely reiterating the arguments made

in his pleadings and at the evidentiary hearing. Having reviewed the report and recommendation, the objections thereto, and relevant portions of the record de novo in accordance with § 636(b)(1), the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Brown's objections are **OVERRULED**, the Magistrate Judge's report and recommendation is **ADOPTED** in its entirety, respondent's motion to dismiss is **GRANTED**, and this action is **DISMISSED** and **STRICKEN** from the active docket of the court.

The Clerk of Court is directed to send copies of this order to both parties.

ENTER: This 14<sup>th</sup> day of May, 2013.

  
Senior United States District Judge